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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 19 and 109**

**Docket ID OCC-2016-0008**

**RIN 1557-AE04**

**Rules of Practice and Procedure;  
Rules of Practice and Procedure in Adjudicatory Proceedings;  
Civil Money Penalty Inflation Adjustments**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Interim final rule and request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to publish the maximum amount, adjusted for inflation, of each civil money penalty within its jurisdiction to administer. These actions are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This rule is effective on August 1, 2016. Comments must be submitted by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Rules of Practice and

Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2016-0008” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- **E-mail:** *regs.comments@occ.treas.gov*.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Fax:** (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2016-0008” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to

public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2016-0008” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen and then “Comments.” Comments can be filtered by clicking on “View All” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. Supporting materials may be viewed by clicking on “Open Docket Folder” and then clicking on “Supporting Documents.” The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, or, for persons who are deaf or hard

of hearing, TTY, (202) 649-5597, or Alexander Abramovich, Attorney, Enforcement and Compliance Division, (202) 649-6200, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),<sup>1</sup> which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act).<sup>2</sup> The Inflation Adjustment Act required the OCC and other Federal agencies with civil money penalty (CMP) authority to publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer.<sup>3</sup> Key features of the Inflation Adjustment Act included requiring such agencies to make inflation adjustments at least once every four years following any initial adjustment, capping the initial inflation adjustment increase at 10 percent, and imposing rounding rules that limited increases based on the amount of the penalty.

The purpose of the 2015 Act is to: (i) establish a mechanism to regularly adjust CMPs for inflation; (ii) maintain the deterrent effect of CMPs and promote compliance

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<sup>1</sup> Pub. L. 114-74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, codified at 28 U.S.C. 2461 note.

<sup>2</sup> See Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

<sup>3</sup> The 2015 Act defines a “civil monetary penalty” to mean “any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

28 U.S.C. 2461 note, section 3(2). Thus, a penalty based on another measure, such as a percentage of total assets, need not be adjusted.

with the law; and (iii) improve the collection of CMPs by the Federal government.<sup>4</sup> Key provisions of the 2015 Act include simplifying the process for calculating the inflation increase, eliminating the complex rounding rules, and requiring Federal agencies to adjust penalties on an annual basis.

The 2015 Act requires agencies to increase the level of each maximum CMP, or the range of minimum and maximum CMPs, with an initial “catch-up” adjustment through an interim final rule published in the Federal Register no later than July 1, 2016, with an effective date no later than August 1, 2016.<sup>5</sup> Under the 2015 Act, agencies must calculate initial catch-up adjustments based on the percentage increase in the October 2015 Consumer Price Index for all Urban Consumers (CPI-U)<sup>6</sup> from the October CPI-U of the year the CMP was established or last adjusted by law. However, for the catch-up adjustment, the amount of the initial increase may not exceed 150 percent of the CMP in effect on the date the 2015 Act was enacted (i.e., November 2, 2015).

The 2015 Act requires agencies to publish subsequent annual adjustments in the Federal Register no later than January 15 of each year, beginning on January 15, 2017. The 2015 Act also requires agencies to calculate subsequent annual inflation adjustments based on the percentage increase in the CPI-U for the month of October preceding the date of the adjustment from the prior year’s October CPI-U and to round all adjustments to the nearest dollar.

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<sup>4</sup> See 28 U.S.C. 2461 note, section 2(b).

<sup>5</sup> The 2015 Act, however, provides a mechanism for an agency, with the concurrence of the Office of Management and Budget (OMB), to reduce a catch-up adjustment if the agency demonstrates the required increase of the penalty or penalty range would have a negative economic impact or that social costs would outweigh the benefits.

<sup>6</sup> This index is published by the Department of Labor.

The 2015 Act also requires OMB to issue guidance to Federal agencies on implementing the required inflation adjustments. The OMB guidance (OMB Guidance), issued February 24, 2016, provides the multiplier (i.e., the inflation adjustment factor agencies must use to adjust their penalties), step-by-step instructions on how to calculate the catch-up adjustments, and other relevant information.<sup>7</sup>

The OCC last evaluated and adjusted the maximum amount of CMPs applicable to national banks and Federal savings associations in 2012. An interim final rule was published in the Federal Register on November 6, 2012,<sup>8</sup> and became effective on December 6, 2012. The OCC published a technical amendment to this rule in the Federal Register on December 28, 2012,<sup>9</sup> that became effective on December 28, 2012.

## **II. Description of the Interim Final Rule**

### **A. Initial Inflation Adjustment**

This interim final rule adjusts for inflation the maximum assessment for each CMP that the OCC has jurisdiction to impose in accordance with the 2015 Act and the OMB Guidance. The OCC is incorporating these adjustments into the charts that are set forth at 12 CFR 19.240(a) with respect to national banks (national bank chart) and 12 CFR 109.103(c) with respect to Federal savings associations (Federal savings association chart). Each chart identifies the statutes that authorize the OCC to assess CMPs, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision. The OCC calculated the amounts in the charts in accordance with the

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<sup>7</sup> Office of Management and Budget Memorandum, M-16-06 (February 24, 2016), available at: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>8</sup> 77 FR 66529.

<sup>9</sup> 77 FR 76354.

OMB Guidance, as follows.

In order to calculate the catch-up adjustment, the OMB Guidance instructs agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (i.e., as originally enacted by Congress), or last adjusted (i.e., by Congress in statute, or by the agency through regulation), whichever is later, other than pursuant to the Inflation Adjustment Act. Thus, this step of the calculation excludes prior inflation adjustments under the Inflation Adjustment Act.<sup>10</sup>

The OMB Guidance then directs agencies to modify that penalty level or range based on the CPI-U for the month of October 2015, not seasonally adjusted. OMB calculated the multiplier that agencies must apply in order to adjust the penalty level or range of penalty levels, based on the year the penalty was established or last adjusted by statute or regulation, and provided these multipliers for the years 1914 through 2015.<sup>11</sup> Agencies must apply the multiplier and round all penalty levels to the nearest dollar. However, because the 2015 Act caps the amount of the initial catch-up adjustment at 150 percent, the OMB Guidance states that each adjusted penalty cannot exceed 250 percent of the penalty level in effect on November 2, 2015.<sup>12</sup> The 2015 Act states that agencies are required to apply the new penalty levels to CMPs that are assessed after the effective date of the rule. The OMB Guidance clarifies that inflation adjustments calculated and assessed pursuant to the 2015 Act adjust penalties prospectively and do not retrospectively change penalties previously assessed or enforced that the agency is

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<sup>10</sup> See OMB Guidance, at 3.

<sup>11</sup> For penalties established or last adjusted prior to 1914, the OMB Guidance states that agencies should use the multiplier for 1914. See id., Table A, at 6.

<sup>12</sup> See 28 U.S.C. 2461 note, section 5(b)(2)(C); see also OMB Guidance, at 3.

actively collecting or has collected.<sup>13</sup>

The worksheets below show how the OCC calculated the new penalty levels for national banks and Federal savings associations. Only two penalties, those provided in 12 U.S.C. 1832(c) and 1884, were capped at 250 percent of the amount of the penalty on November 2, 2015.

The OCC did not exercise the discretion it is provided under the 2015 Act to seek a reduced catch-up adjustment determination from OMB. Such a request would have required the OCC to demonstrate that the penalty would have a negative economic impact, or that the social costs of the adjustment would outweigh the benefits.<sup>14</sup> As the penalties reflected in the national bank chart and Federal savings association chart are, for the most part, maximum penalties, the OCC may impose lesser penalties, if warranted. Accordingly, the OCC concluded that a reduced catch-up adjustment determination was not necessary.

B. Penalties Added to the National Bank Chart and Federal Savings Association Chart

This interim final rule adjusts the following additional penalties that are being incorporated into the national bank chart and Federal savings association chart. First, both charts include a new CMP, provided in 15 U.S.C. 1639e(k), created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>15</sup> The new CMP makes it unlawful for a creditor who extends credit, or provides any services for a consumer credit transaction secured by the consumer's principal dwelling, to engage in

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<sup>13</sup> See OMB Guidance, at 4.

<sup>14</sup> See 28 U.S.C. 2461 note, section 4(c) and OMB Guidance, at 3.

<sup>15</sup> See Dodd-Frank Act, Pub. L. 111-203, Title XIV, section 1472, July 21, 2010, 124 Stat. 2187, codified at 15 U.S.C. 1639e(k).



any act or practice that violates the regulation implementing the appraisal independence requirements in section 1472 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act, the maximum daily penalty for the first violation is \$10,000 and the maximum daily penalty for subsequent violations is \$20,000. The adjusted maximum daily penalties will be \$10,875 and \$21,749, respectively.

The OCC also is adjusting the penalty provided in 12 U.S.C. 481, an existing CMP that previously was not included in the chart. Twelve U.S.C. 481 authorizes the OCC to assess on a national bank a maximum daily penalty of no more than \$5,000 if any affiliate of a national bank refuses to permit an examiner to make an examination of such affiliate or refuses to provide any information required in the course of such an examination. The adjusted maximum daily penalty will be \$9,468.

In addition, the OCC is adjusting the penalties provided in 12 U.S.C. 1832(c), 12 U.S.C. 1972(2)(F), and 15 USC 78u-2(b), three CMPs that are in the national bank chart, but were not previously included in the chart applicable to Federal savings associations. Twelve U.S.C. 1832(c) makes it unlawful for a depository institution to violate the restrictions on withdrawals by negotiable or transferable instruments for transfers to third parties. The penalty when first established was \$1,000 per violation. The adjusted penalty will be \$2,750 per violation. Twelve U.S.C. 1972(2)(F) makes it unlawful for a savings association to violate anti-tying restrictions regarding correspondent accounts, unsafe or unsound practices, or breach of fiduciary duty. When first established, the maximum daily penalty was: \$5,000 for a tier 1 violation; \$25,000 for a tier 2 violation; \$1,000,000 for a tier 3 violation by a person other than a bank; and the lesser of \$1,000,000 or 1 percent of total assets for a tier 3 violation by a bank. The adjusted

maximum daily penalties will be: \$9,468 for a tier 1 violation; \$47,340 for a tier 2 violation; \$1,893,610 for a tier 3 violation by a person other than a bank; and the lesser of \$1,893,610 or 1 percent of total assets for a tier 3 violation by a bank. Fifteen U.S.C. 78u-2(b) provides penalties for violations of various provisions of the Securities Act,<sup>16</sup> the Securities Exchange Act,<sup>17</sup> the Investment Company Act,<sup>18</sup> and the Investment Advisers Act,<sup>19</sup> as applicable. When first established, the maximum penalty per violation was: \$5,000 for a tier 1 violation by a natural person; \$50,000 for a tier 1 violation by any other person; \$50,000 for a tier 2 violation by a natural person; \$250,000 for a tier 2 violation by any other person; \$100,000 for a tier 3 violation by a natural person; and \$500,000 for a tier 3 violation by any other person. The adjusted maximum penalties will be: \$8,907 for tier 1 (natural person); \$89,078 for tier 1 (other person); \$89,078 for tier 2 (natural person); \$445,390 for tier 2 (other person); \$178,156 for tier 3 (natural person); and \$890,780 for tier 3 (other person).

C. Other Technical Changes to the National Bank Chart and Federal Savings Association Chart

The OCC is making several minor technical edits to the national bank chart and Federal savings association chart. The OCC is amending the charts by adding a footnote to each chart, where appropriate, to clarify that for certain penalties the applicable statute provides that the penalty will be the lesser of a dollar adjusted penalty amount or 1

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<sup>16</sup> Securities Act of 1933, Title I of Pub. L. 73-22, enacted May 27, 1933, 48 Stat. 74, codified at 15 U.S.C. 77a, et seq.

<sup>17</sup> Securities Exchange Act of 1934, Pub. L. 73-291, enacted June 6, 1934, 48 Stat. 881, codified at 15 U.S.C. 78a, et seq.

<sup>18</sup> Investment Company Act of 1940, Pub. L. 76-768, enacted Aug. 22, 1940, 54 Stat. 789, codified at 15 U.S.C. 80a-1, et seq.

<sup>19</sup> Investment Advisers Act of 1940, Pub. L. 76-768, enacted Aug. 22, 1940, 54 Stat. 847, codified at 15 U.S.C. 80b-1, et seq.

percent of the bank's total assets. The text of the new Federal savings association chart no longer includes reference to 12 U.S.C. 3349(b). This penalty is an example of penalties that do not themselves provide the amount of the penalty but rather cross-reference 12 U.S.C. 1818. Instead, the OCC is adding a footnote to the national bank chart (footnote 3) and the Federal savings association chart (footnote 3), where appropriate, explaining that statutes cross-referencing 12 U.S.C. 1818 are adjusted automatically when the penalty in section 1818 is adjusted for inflation.

The interim final rule also deletes §§ 19.240(c) and 109.103(d), which provided an effective date of July 6, 2012, for the amount of the penalties for violations of 42 U.S.C. 4012a(f)(5), as all the penalty amounts on the revised national bank chart and Federal savings association chart are now effective on the same date.

Finally, consistent with the 2015 Act, revised §§ 19.240(b) and 109.103(c) state that the penalties in the charts at §§ 19.240(a) and 109.103(c) apply only to penalties assessed on or after the effective date of this interim final rule, August 1, 2016.

## 2015 Worksheet - National Banks

<u>U.S. Code Citation</u>	<u>Tier (if applicable)</u>	<u>Maximum Penalty on Nov. 2, 2015 (in Dollars)</u>	<u>Year Established Or Last Adjusted</u>	<u>Amount When Established or Last Adjusted</u>	<u>Inflation Factor</u>	<u>Amount of Increase (Rounded to Nearest Dollar)</u>	<u>Adjusted Maximum Penalty (after rounding and comparison calculation) (in Dollars)</u>
12 U.S.C. 93(b)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 164	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,000	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 481	Per day	5,000	1989	5,000	1.89361	9,468	9,468
12 U.S.C. 504	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1817(j)(16)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1818(i)(2)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2004	250,000	1.24588	311,470	311,470
12 U.S.C. 1832(c)		1,100	1973	1,000	5.21575	5,216	2,750 <sup>20</sup>
12 U.S.C. 1884		110	1968	100	6.73762	674	275 <sup>20</sup>
12 U.S.C. 1972(2)(F)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 3110(a)		37,500	1991	25,000	1.73099	43,275	43,275
12 U.S.C. 3110(c)	Tier 1	3,200	1991	2,000	1.73099	3,462	3,462
	Tier 2	32,000	1991	20,000	1.73099	34,620	34,620
	Tier 3	1,425,000	1991	1,000,000	1.73099	1,730,990	1,730,990
12 U.S.C. 3909(d)(1)		1,100	1983	1,000	2.35483	2,355	2,355
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	7,500	1990	5,000	1.78156	8,908	8,908
	Tier 1 (other person)	70,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (natural person)	70,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (other person)	350,000	1990	250,000	1.78156	445,390	445,390
	Tier 3 (natural person)	140,000	1990	100,000	1.78156	178,156	178,156
	Tier 3 (other person)	700,000	1990	500,000	1.78156	890,780	890,780
15 U.S.C. 1639e(k)	First violation	10,000	2010	10,000	1.08745	10,875	10,875
	Subsequent violation	20,000	2010	20,000	1.08745	21,749	21,749

<sup>20</sup> Because the 2015 Act caps the amount of the initial inflation adjustment (catch-up adjustment) at 150 percent, the catch-up adjustment cannot exceed 250 percent of the penalty level(s) in effect on the date the 2015 Act was enacted (i.e., November 2, 2015).

<u>U.S. Code Citation</u>	<u>Tier (if applicable)</u>	<u>Maximum Penalty on Nov. 2, 2015 (in Dollars)</u>	<u>Year Established Or Last Adjusted</u>	<u>Amount When Established or Last Adjusted</u>	<u>Inflation Factor</u>	<u>Amount of Increase (Rounded to Nearest Dollar)</u>	<u>Adjusted Maximum Penalty (after rounding and comparison calculation) (in Dollars)</u>
42 U.S.C. 4012a(f)(5)	Per violation	2,000	2012	2,000	1.02819	2,056	2,056

### **2015 Worksheet – Federal Savings Associations**

<u>U.S. Code Citation</u>	<u>Tier (if applicable)</u>	<u>Maximum Penalty On Nov. 2, 2015 (in Dollars)</u>	<u>Year Established Or Last Adjusted</u>	<u>Amount When Established or Last Adjusted</u>	<u>Inflation Factor</u>	<u>Amount of Increase (Rounded to Nearest Dollar)</u>	<u>Adjusted Maximum Penalty (after rounding and comparison calculation) (in Dollars)</u>
12 U.S.C. 1464(v)	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,500	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,500	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1467(d)		7,500	1989	5,000	1.89361	9,468	9,468
12 U.S.C. 1467a(r)	Tier 1	3,200	1989	2,000	1.89361	3,787	3,787
	Tier 2	32,500	1989	20,000	1.89361	37,872	37,872
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1817(j)(16)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,425,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1818(i)(2)	Tier 1	7,500	1989	5,000	1.89361	9,468	9,468
	Tier 2	37,500	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,375,000	1989	1,000,000	1.89361	1,893,610	1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2004	250,000	1.24588	311,470	311,470
12 U.S.C. 1832(c)		1,000	1973	1,000	5.21575	5,216	2,500 <sup>21</sup>
12 U.S.C. 1884		110	1968	100	6.73762	674	275 <sup>21</sup>
12 U.S.C. 1972(2)(F)	Tier 1	5,000	1989	5,000	1.89361	9,468	9,468
	Tier 2	25,000	1989	25,000	1.89361	47,340	47,340
	Tier 3	1,000,000	1989	1,000,000	1.89361	1,893,610	1,893,610
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	5,000	1990	5,000	1.78156	8,908	8,908
	Tier 1 (other person)	50,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (natural person)	50,000	1990	50,000	1.78156	89,078	89,078
	Tier 2 (other person)	250,000	1990	250,000	1.78156	445,390	445,390
	Tier 3 (natural person)	100,000	1990	100,000	1.78156	178,156	178,156
	Tier 3 (other person)	500,000	1990	500,000	1.78156	890,780	890,780
15 U.S.C. 1639e(k)	First violation	10,000	2010	10,000	1.08745	10,875	10,875
	Subsequent violations	20,000	2010	20,000	1.08745	21,749	21,749
42 U.S.C. 4012a(f)(5)	Per violation	2,000	2012	2,000	1.02819	2,056	2,056

### **III. Request for Comments**

<sup>21</sup> Because the 2015 Act caps the amount of the initial inflation adjustment (catch-up adjustment) at 150 percent, the catch-up adjustment cannot exceed 250 percent of the penalty level(s) in effect on the date the 2015 Act was enacted (i.e., November 2, 2015).

The 2015 Act requires the OCC to adjust the CMPs that it has jurisdiction to administer through an interim final rule. The 2015 Act also dictates the method by which the amount of the initial catch-up adjustment for each CMP must be calculated. As noted in the OMB Guidance, agencies are not required to complete a notice-and-comment process prior to publication of this interim final rule in the Federal Register.<sup>22</sup> However, the OCC invites comments on all aspects of this interim final rule. Commenters are specifically encouraged to identify any technical issues raised by the rule, including identifying any CMPs that may have been unintentionally omitted from this rulemaking.

#### **IV. Regulatory Analysis**

##### **A. Delayed Effective Date**

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994<sup>23</sup> (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this interim final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

The Administrative Procedure Act generally requires an agency to publish a rule 30 days prior to its effective date.<sup>24</sup> This interim final rule satisfies that requirement. It

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<sup>22</sup> See OMB Guidance, at 3.

<sup>23</sup> 12 U.S.C. 4802.

<sup>24</sup> 5 U.S.C. 553(d).

also satisfies the requirement in the 2015 Act to publish the initial interim final rule no later than July 1, 2016, with an effective date no later than August 1, 2016.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>25</sup> Because the 2015 Act requires agencies' catch-up adjustments to be made through an interim final rule, the OCC is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim final rule.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995<sup>26</sup> requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because the OCC is not publishing a notice of proposed rulemaking, this interim final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

**List of Subjects**

**12 CFR Part 19**

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

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<sup>25</sup> 5 U.S.C. 601(2).

<sup>26</sup> 2 U.S.C. 1532.



## **12 CFR Part 109**

Administrative practice and procedure, Federal savings associations, Penalties.

### **Authority and Issuance**

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

### **PART 19 – RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 19 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Section 19.240 is revised to read as follows:

#### **§ 19.240 Inflation adjustments.**

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is set forth as follows:

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 164	Violation of Reporting Requirements: Tier 1 Tier 2 Tier 3	3,787 37,872 1,893,610 <sup>2</sup>
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination (national bank)	9,468
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 1818(i)(2) <sup>3</sup>	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	311,470
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties: Per violation	2,750
12 U.S.C. 1884	Violation of the Bank Protection Act	275
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>

<sup>1</sup> The maximum penalty amount is per day, unless otherwise indicated.

<sup>2</sup> The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.

<sup>3</sup> These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1639e(k), 1693o, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies):	43,275
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies): Tier 1 Tier 2 Tier 3	3,462 34,620 1,730,990 <sup>2</sup>
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,355
15 U.S.C. 78u-2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: Tier 1 (natural person) – Per violation Tier 1 (other person) – Per violation Tier 2 (natural person) – Per violation Tier 2 (other person) – Per violation Tier 3 (natural person) – Per violation Tier 3 (other person) – Per violation	8,908 89,078 89,078 445,390 178,156 890,780
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	10,875 21,749
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,056

(b) The maximum amount of each civil money penalty set forth in the chart in paragraph (a) of this section applies to penalties assessed on or after August 1, 2016.

## **PART 109 – RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS**

3. The authority citation for part 109 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554-557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817, 1818, 1820(k), 1829(e), 1832, 1884, 1972, 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(l), 78o-5, 78u-2, 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

4. Section 109.103 is amended by revising paragraph (c) to read as follows and by removing paragraph (d):

**§ 109.103 Civil money penalties.**

\* \* \* \* \*

(c) Maximum amount of civil money penalties. The maximum amount of each civil money penalty in the chart below applies to penalties assessed on or after August 1, 2016:

<u>U.S. Code Citation</u>	<u>CMP Description</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 1464(v)	Reports of Condition: 1 <sup>st</sup> Tier 2 <sup>nd</sup> Tier 3 <sup>rd</sup> Tier	3,787 37,872 1,893,610 <sup>2</sup>
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	9,468
12 U.S.C. 1467a(r)	Late/Inaccurate Reports: 1 <sup>st</sup> Tier 2 <sup>nd</sup> Tier 3 <sup>rd</sup> Tier	3,787 37,872 1,893,610 <sup>2</sup>
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 1818(i)(2) <sup>3</sup>	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	311,470
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties: Per violation	2,500
12 U.S.C. 1884	Violation of the Bank Protection Act	275
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,468 47,340 1,893,610 <sup>2</sup>
15 U.S.C. 78u-2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: 1 <sup>st</sup> Tier (natural person) – Per violation 1 <sup>st</sup> Tier (other person) – Per violation 2 <sup>nd</sup> Tier (natural person) – Per violation 2 <sup>nd</sup> Tier (other person) – Per violation 3 <sup>rd</sup> Tier (natural person) – Per violation 3 <sup>rd</sup> Tier (other person) – Per violation	8,908 89,078 89,078 445,390 178,156 890,780

<sup>1</sup> The maximum penalty amount is per day, unless otherwise indicated.

<sup>2</sup> The maximum penalty amount for a savings association is the lesser of this amount or 1 percent of total assets.

<sup>3</sup> These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1639e(k), 1693o, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>CMP Description</u>	Maximum Penalty Amount (in Dollars) <sup>1</sup>
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	10,875 21,749
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,056

Dated: June 23, 2016

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**Thomas J. Curry,**  
*Comptroller of the Currency.*

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